IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2117 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARUCH MUNICIPALITY - Petitioner(s)

Versus

JYOTINDRA M. PANCHAL & 1 - Respondent(s)

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Appearance :

HL PATEL ADVOCATES for Petitioner(s) : 1,
MR PN BAVISHI for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 13/01/2006

CAV JUDGMENT

1.By filing this petition under Article 226 of the Constitution of India, the petitioner has prayed to uphold the action of the petitioner in relieving

respondent No.1 from the service on account of constant absence from duty without sanction of leave.

2. Having heard the learned advocates for the parties and having perused the material on record, it appears that this Court vide order dated 28.4.1995 admitted the matter and stayed the back wages only. It is submitted by Mr.P.N.Bavishi, learned advocate appearing for respondent No.1 that respondent No.1 has already been reinstated in service and, therefore, now the question with regard to the reinstatement does not survive. Now the question which is required to be considered by this Court is with regard to the back wages for the intervening period.

3. The Labour Court, after appreciating the evidence on record, by its judgment and award dated 8.8.1994 passed in Reference (LCB) No.111 of 1991, directed the petitioner to reinstate the respondent workman, by quashing and setting aside the order dated 16.6.1987 and also directed to pay the full back wages for the intervening period with continuity of service. As stated above, since the respondent – workman has already been reinstated in the service, the question with regard to the reinstatement does not survive. Therefore, no order is required to be passed with regard to the reinstatement of the respondent –

workman. The Labour Court, has come to the conclusion, that since the action of termination by the petitioner is illegal, normally the respondent – workman is entitled for the full back wages for the intervening period and except that, no reasons have been assigned by the Presiding Officer, Labour Court, Bharuch while passing order dated 8.8.1994. It is required to be noted that there is no straight jacket formula for granting the back wages for the intervening period and as a matter of right, the respondent – workman cannot claim the back wages for the intervening period. It can be noticed from the record that the petitioner is the public body formed under the Gujarat Municipalities Act and that the management of the petitioner is required to be done by the staff employed by the petitioner – Municipality. The respondent was recruited as a temporary clerk, and thereafter he was given permanent appointment. It can also be noticed from the record that the respondent was irregular in his service and he used to remain absent from duty without obtaining any leave. It is the contention of the learned advocate appearing on behalf of the petitioner that the respondent has remained absent as many as on 8 occasions i.e., leave without pay as mentioned at page 4 in the compilation and that in spite of repeated

requests and despite the fact that the respondent was called upon to show cause as to why the action shall not be taken against him on account of his unauthorized absence, the respondent remained absent from duty without sanction of leave. Under the aforesaid circumstances, since the conduct of the respondent clearly establishes the callous attitude of respondent No.1 in remaining absent for a long period without any sanction of leave, I am of the considered opinion that the respondent – workman is not entitled for any back wages for the intervening period and the Labour Court has erred in granting full back wages. Therefore, the award qua the back wages is required to be set aside.

4. In the result, this petition is partly allowed. The order dated 8.8.1994 passed by the Presiding Officer, Labour Court, Bharuch in reference (LCB) No. 111 of 1991 qua the back wages is quashed and set aside. Rule is made absolute to the aforesaid extent. No costs.

(SHARAD D DAVE, J)

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